IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.748 OF 2001

In

NOTICE OF MOTION NO.140 OF 1999

In

SUIT NO.1578 OF 1981

M/s.Kiran Construction Company : Appellant
(Orig.Plaintiff)

V/s.

Mrs.Leela Vishnu Vaity & Ors. : Respondents

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Mr.D.D.Madon, senior counsel, with Ms D. Shah i/b. M/s.Vyas & Bhalwal for the appellant.

Mr.S.K.Shah i/b. Mr.S.V.Mhatre for respondent nos.1A to 4C & 17.

Mr.P.N.Modi i/b. Mr.N. Janardhan for respondent nos.13A to 13E and 14.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 17, 2006.

P.C.

Heard the senior counsel and counsel for the parties.

2. In view of the order passed by us on 16.11.2006 in Appeal No.745 of 2001, in our view, the impugned order has to be set aside and the Notice of Motion deserves fresh consideration by the learned Motion Judge, in accordance with law.

3. We, accordingly, set aside the order dated 21.6.2001 and restore Notice of Motion no.140 of 1999 to the file of the learned Motion Judge for fresh hearing and disposal. Since the Notice of Motion is of the year 1999, we request the learned Motion Judge to give priority to the Notice of Motion and dispose of the same, as early as possible.

4. Needless to say that the contentions of the parties, including the contention of the counsel for the appellant about suppression of material facts by the plaintiff for obtaining interim relief, are kept open to be agitated before the learned Motion Judge.

5. Appeal stands disposed of.

R.M. LODHA, J.

S.A. BOBDE, J.